قانونِ وراثت

ISLAMIC LAW OF INHERITANCE

Extract from

AHKAM-E-MAYYIT



by

Dr. Abdul Hai A'rfi

Translatedby

Muhammad Shamim



DARUL-ISHAAT
URDU BAZAR, KARACHI

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PUBLISHER'S NOTE

DEAR READERS,

This short work on the Islamic law of inheritance originally entitled "AHKAM-E- MAYYIT" by great spiritual leader late Dr. Abdul Hayy Arifi. The book deals with the Islamic rules about the burial of a dead muslim as well as about the related aspects of the subject. The work in hand is one of the chapters of the book dealing with the Islamic law of inheritance.

The usefulness and the easy approach of the author to this purely technical subject has made it a very important booklet which satisfies nearly an details related to the subject. As far as I know such a handy collection of authentic collection of Islamic rules on inheritance does not exist in English language.

I feel great Pleasure to Publish it as a separate booklet for the convenience of the readers.

May Allah accept it as a an effort towards a good cause.

Khalil Ashraf.
DARUL - ISHAAT.
Urdu Bazar Karachi.

ISLAMIC LAW OF INHERITANCE

Whatever is owned by a person at the time of his or her death -- wealth or property, movable and immovable, cash, jewellery, clothes, virtually everything big or small, even an ordinary needle and thread -- comes under his or her inheritance (ترکہ) according to the Shari'ah. This also includes clothes the deceased was wearing at the time of death. In addition to that, any loans given by the deceased to someone which remain unrealized but are received after the death of the deceased shall also be counted as part of the total inheritance.

There are four claims (rights) on the total inheritance of the deceased in the order given below. Their disbursement, in accordance with the rules laid out in the Shari'ah, is *wajib* (obligatory). That this is done faithfully and precisely is the crucial responsibility of the

inheritors, so much so that nobody is permitted to take out even a cardamom [1] lying inside some pocket of the deceased and put it in one's mouth without the express permission of the sharers of the inheritance, for that cardamom is not the share of one person alone.

These four claims or rights are :

1. The preparation of the deceased by bathing and shrouding.
2. The financial claim or debt owed by the deceased to someone.
3. The valid will or testament made by the deceased.
4. The distribution of the inheritance among inheritors.

It means that expenses on the bathing, shrouding and burial should be paid from the inheritance as a matter of first priority. What remains should be used to pay off all debts owed by the deceased. Then, what remains should be applied against any valid will made by the deceased which should not exceed the limit of one-third. After that, the remaining two-third of the inheritance should be distributed among all inheritors in accordance with

1. Cardamom: *Ila'ichi, qaqulla, Alpinia Cardamoms*: common eastern mouth-freshener, also additive in desserts, and in hot drinks like the Arab Cahva with green mint leaves.

shares fixed by the Shari'ah. If the deceased had no debt to pay back, nor had he made a will about the inheritance, then, what ever of inheritance remains after paying for the bathing, shrouding and burial, will all belong to the inheritors who will inherit it in accordance with the shares fixed by the Shari'ah. Details about these four claims shall appear later under relevant subject headings.

Things not included under inheritance

Before we take up the details of these four claims, it is necessary to understand that things in the possession of the deceased, things of which he was not the owner, even though he had been using them freely like an owner, will not be included in his inheritance. All such things should be returned to their real owners. Spending or using them in the bathing, shrouding and burial of the deceased is not permissible. Examples :

(1) Things which the deceased had borrowed from someone for temporary use (*'ariyah*) or things which someone had placed with him in trust (*amanah*) will not be included in the inheritance. All such things should be returned to their owners. (Mufidul-Warithin, p. 27)

(2) If the deceased had kept something by extortion, theft or breach of trust (*khiyanah*), that too is not included in the inheritance and should be returned to its owner. (Mufidul-Warithin, p. 28)

(3) If the deceased had gifted (*hibah*) something which belonged to him before *maradul-maut* (literally,

'the disease of death', meaning 'a disease during which the deceased died') and had seen that it goes in the actual possession of the receiver of the gift, then, this thing has gone out of the possession of the deceased and the one who has received it becomes its owner. So, this will not be included in the inheritance of the deceased after his death. But, should it be that he had simply said this verbally or in writing, to the effect - 'I give this to you' or 'I have gifted this to you' - and had not made him take the actual possession, then, this act of saying or writing will not be taken into consideration. This is neither a gift (*hibah*) nor a will (*wasiyyah*), therefore, this thing will remain within the ownership of the deceased and will be included in his inheritance after his death.

(Bahishti Zewar, v.5, p. 60)

And if this thing was given during *maradul-maut* and the deceased had also made him take it in his possession, then, this act of giving will fall under the rule governing a will. Therefore, this thing will be counted as part of the inheritance and, after the total cost of the funeral and the debts have been paid off, this too will be handled like other wills are handled subject to their governing conditions. Details of this question will appear later under a separate heading concerning wills.

(Mufidul-Warithin, Shami, Bahishti Zewar)

The pension received after death is not included in inheritance

Pension until received does not form part of ownership. Therefore, whatever amount of pension is

received after the death of the deceased will not be counted in the inheritance because inheritance is what the deceased owns at the time of his death and this amount had not yet passed into his ownership until his death. Therefore, the four financial claims which it is obligatory to disburse from the inheritance shall not be so applied on this amount. Also, the rule of inheritance will not become operative here. However, to whomsoever the government (or the company) decides to give this amount will become its owner because this is a sort of award, not salary or wages. So, should the government or company award this pension to one of the relatives of the deceased, he will become its sole owner. And if this is given for all inheritors, all inheritors will distribute [1] it among themselves. But, this distribution will not be because of the factor of inheritance, rather, it would be deemed as an award given to them by the government or company.

Some possessions of the deceased are also not included in his inheritance

The gist of what has been said upto this point is that

1. قول الظاهرانه يقسم على قدرسهما مهم فى الارث وان لم يكن المال موروثا من الميت لما في الدرالمختار ان اوصى لورثة فلان فهو للزكر مثل حظ الانثيين لانه اى الموصى اعتبر الوراثة وقال الشامى تحته لان التنصيص على الاسم المشتق يدل على ان الحكم يترتب على ماخذ الاشتقاق فكانت الوراثة هى العلة، زيلعى، ثم قال الشامى وظاهره ان قوله للزكر مثل حظ الانثيين ليس عاماً في جميع الورثة، بل خاص بالا ولاد والاخوة والا خوات وفى غيرهم يقسم على قدر فروضهم وهوالمركور فى الاسعاف والخصاف في مسائل الاوقاف، والوصية اخت الوقف انظر ردالمحتار، ص ٦٠٣ ج ٥، (رفيع العثمانى)

everything owned by the deceased at the time of his death is his inheritance and things which he did not own at that time are not included in his inheritance. But, this rule has some particular exceptions, that is, some things which by right belong to someone else, will not become part of the inheritance inspite of being in the possession of the deceased. Two examples are given below:

(1) There may be something the deceased had purchased but had neither paid for nor taken possession of it, rather, it was still present [1] in the hands of the seller, and the deceased left nothing behind other than this (which could be used to first pay for the funeral expenses and then pay for the cost of the thing he had purchased) in which situation this thing, though it had become the property of the deceased, will not be included in his inheritance.

(2) Similarly, something the deceased had mortgaged against a loan and had left behind no cash or property to help pay back the debt, then, this thing, irrespective of having been in the possession of the deceased, will not be included in his inheritance. It means that in a situation

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1. In case the deceased had taken possession and had not paid for it. then, the seller cannot take it back. This will be included in the inheritance and it will be used to pay for the expenses incurred on the funeral services following which, the seller will be paid the purchase price observing the rule governing the payment of debts. These rules have been described later under 'Debts'. (Rafi Usmani)

where the deceased has left no cash or property, the seller who has not received payment for what he sold and the mortgagee who has not yet received what he loaned can arrange to sell things they hold in their possession and can thus settle their claim before anybody else. It is only after their claim has been settled, anything that remains, if it remains, shall be deemed as the inheritance out of which funeral expenses and debts will be paid off, and the will and the legacy will be taken care of according to rules set for each. In case, nothing is left behind, the relatives should themselves bear the funeral costs. (Mufidul-Warithin, Shami, al-Durr al-Mukhtar)

We have given only two examples here. Should there be some other situation corresponding to these in which somebody else's claim is tied up with something particular and fixed under the possession of the deceased, then, it is advisable to consult a learned and trustworthy religious scholar and to act in accordance with his advice. Please never take action based on your personal opinion or analogous deduction because the slightest of change in the situation (which everyone cannot discern) changes the relevant ruling.

What has been set aside for a particular person during one's life-time is included in the inheritance

If a person had, during his life-time, collected cash, clothes or jewellery for the marriage of his children

and hoped to use it when a son or daughter of his gets married or give it as marriage [1] portion (*Jahez*: dowry) of his daughter, but, as fate would have it, this person died without making that particular child the owner-possessor of these things. In this case, all such things shall be included in the inheritance and that particular son or daughter will have no special right on or claim to it. On the contrary, they will get just what comes to them as their share in accordance with the rules of inheritance after the funeral expenses, payment of debts and the execution of wills have been taken care of.

(Mufidul-Warithin)

Now that we understand the nature and composition of inheritance, let us take up the four claims on inheritance in some details. The disbursement of these claims will be made in accordance with the order given below.

1. Funeral Expenses

First of all the funeral expenses should be taken from the inheritance of the deceased. But, this obligation must be discharged simply and functionally in accordance with *Sunnah* as laid down by the Shari'ah (details of which have appeared earlier). The shroud too should match the general status of the deceased. Select white cloth of a price the deceased used to wear while going

1. If this happens in the case of a non-pupert son or daughter, please consult reliable scholars.

out to meet people or to visit the mosque or market. Do not buy too cheap a cloth causing disgrace to the deceased, nor something so expensive which may touch the limits of extravagance and thereby chip off money from the pool of inheritance and cause loss to debtees and inheritors. Make the grave in mortar whether the deceased be rich or poor. If a bather of the body or the grave digger has to be hired, make the cost average within limits of capability. If space in the general graveyard for the Muslims is not available, a plot of land for the grave should be purchased. The cost of the land should be taken from the inheritance like everything [1] else procured for the funeral. (Mufidul-Warithin, p. 32)

Rulings

(1) The large sheet used to cover the *janazah* is not included[2] in the prescribed 'shroud'. The prayer-spread saved from the shroud cloth for use by the Imam is extra to the prescribed shroud and simply useless. Therefore, should it be that the inheritance of the deceased have no more than what is enough for liquidation of the debt, or the inheritors are minors, then, making this prayer-spread and covering sheet and thereby causing loss to debtees or orphans is not permissible under any condition, in fact, it is strictly prohibited. Some people who do not

1. A complete list of things needed for the funeral has appeared earlier. Everything, including fragrance, can be taken out of the inheritance. (Shami)

2. Details of things needed for the funeral have appeared earlier. Please see again. (Rafi Usmani).

know might laugh at this ruling, but they will soon be chastened with surprise when they hear about the limits to which authentic books of Shari'ah go in this matter. They say if the deceased is under a lot of debt, his debtees can force the inheritors to restrict the shroud to only two cloth pieces. It means that they can have one cloth piece (shroud-dress or under-wrap) eliminated even from the standard *sunnah kafan* (the shroud prescribed by the Holy Prophet ﷺ). So, who can think of pleading for the provision of extra covering sheets and prayer - spreads? (Mufidul-Warithin, p. 33)

(2) The senseless customs of all sorts, innovations (*bid'at*) and spendings including, for instance, a feast by the family of the deceased, other than the normal funeral process in accordance with the Shari'ah, are things for which it is not permissible to take any money from the inheritance under any condition. Similarly, it is not permissible to spend anything out of the inheritance to entertain those who come to offer their condolences. Anyone who does it, inheritor or non-inheritor, will have to compensate for the extra expenditure. Or, in case he is an inheritor, it will be deducted from his share in the inheritance. (Mufidul-Warithin, p. 33)

(3) Some people who do not know the rules give out things in charity before the distribution of the inheritance, such as grains, money and clothes. These give-outs will never be counted as valid expenses on the

funeral, instead, it will be necessary that the giver pays compensation for them. This matter is very delicate. Great restraint and care should be exercised. There are situations when among the inheritors left behind by the deceased, there are young orphaned children who deserve all sympathy, or the deceased is under debt while relatives care more for following customs and go about spending callously what is not theirs on unauthorized activities inviting in this process the punishment of the *Akhirah* on themselves, because this action of theirs violates the rightful claims of the debtees or inheritors. The forms of this injustice are many. It is fairly common that sewn clothes belonging to the deceased are given out in charity on his behalf. When a husband dies leaving behind the widow and minor children, the widow would start giving things from the inheritance in charity not realizing that innocent children have claims on this inheritance. No doubt, she is their mother, but she is not entitled to unnecessarily spend out what belongs to them - even if the children were to allow her to do so for their permission is not valid in the sight of the Shari'ah.

Giving of charity on behalf of the deceased is, without any doubt, very desirable and merit-worthy. The deceased does get its reward (*thawab*). But, charities (*sadaqat*) can be good and beneficial if they are in line with the dictates of the Shari'ah. The Shari'ah commands: Do not make your hands dirty by ill-spending what belongs to the claimants and orphans. Instead, whoever has the ability and the desire should

come up with charity from his own lawfully earned property. Therefore, it is necessary that the inheritance should first be distributed in accordance with the rules of the Shari'ah. It is only after that, that the adult inheritors can give what they wish out of their share. Never give before the distribution.

(Mufidul-Warithin, p. 34 & Bahishti Zewar)

(4) If the deceased is a woman with her husband alive, the funeral expenses must be paid, as a matter of obligation, by the husband. This should not be taken from the wife's share in the inheritance. However, if she does not have her husband, it should be taken from it as usual. (Mufidul-Warithin, p. 36 and Shami, v.1, p. 810)

(5) If a near relative or someone else desires to take care of the cost of the funeral willingly as an act of parting service for the deceased, man or woman, and the inheritors too agree to this, then he can do so subject to the condition that he be sane and adult. Under this situation, the funeral expenses should not be taken from the inheritance. (Mufidul-Warithin, p. 35)

(6) If, by chance, beasts wreck the grave, destroy the shroud and pull the dead body out, or the shroud-lifters leave the dead body naked, in which case, the cost of the second shroud will also have to be given from the inheritance of the deceased. In this situation, bathing and prayer are not repeated. (Mufidul-Warithin, p. 35 and Shami)

(7) If the deceased left nothing behind, who will pay for the funeral? Full detail about this question have

already appeared and may be seen there.

(8) The funeral is the first of the four *seriatim* claims due against inheritance. If nothing remains after paying for the cost of funeral, the debtees get nothing, there is no disbursement against a will, if made, and the inheritors inherit nothing from the inheritance.

(Mufidul-Warithin, p. 36)

2. The Payment of Debts

After funeral expenses have been taken care of, the most important task is to pay debts owed to others [1] by the deceased. If the dower (*mahr*) of his wife was not paid by the deceased, that too is a debt and its payment is as necessary and binding as is the payment of other debts. So, it is obligatory to first pay off all debts owed by the deceased from his inheritance, from what remains of it, after defraying the cost of the funeral, whether or not a will to this effect was made and regardless of the likelihood that this remaining inheritance, the whole of it, is consumed in the very payment of these debts. If any part of inheritance does remain after the payment of debts, it will be further applied to payments as in the will of the deceased in accordance with rules laid down by the Shari'ah and, in case of further left-overs, the

1. This concerns debts owed to people created by Allah. Then there are the debts of Allah which may have remained unserviced by the deceased such as the *qada'* of missed prayers, the *fidyah* of missed fasts, *Zakah*, *Hajj*, vows etc. Relevant rules for these will appear later under distinct headings. (Rafi Usmani)

inheritors too will get their shares. If nothing remains, there will be nothing to spend on the fulfillment of the will and the inheritors will have nothing to receive because, in the Shari'ah, the payment of debts takes precedence over will and inheritance under all conditions. (Mufidul-Warithin, pp. 36-51)

The Holy Prophet صلى الله عليه وسلم has spoken very strongly about the need to pay debts. He would not lead the *janazah salah* for people who left unpaid debts in their name and, worse still, left nothing in their inheritance to help clear them with. In such cases, he used to ask his Companions to lead the necessary *salah* of *janazah* for the deceased. As obvious, such people remained deprived of his *salah* and his prayers for their forgiveness.

***Hadith* :**

Sayyidna Abu Hurairah رضى الله عنه narrates:

"When the body of a deceased person who was in debt was brought before the Holy Prophet صلى الله عليه وسلم for the *salatul-janazah*, he would ask, 'Has he left enough to pay for his debt?' When he was informed that he has, then, he would lead the *salah* for him. Otherwise, he asked his Companions to do it." (Sahih Muslim, v.2, p. 35)

Although the debt these people incurred was never beyond normal limits - they borrowed only when in need - yet the Holy Prophet صلى الله عليه وسلم was so strict about it. Here, in our own time, people go about borrowing

huge sums of money to engage in all sorts of wasteful activities and then they die and their inheritors find them no good to think about.

***Hadith* :**

It has been reported in an authentic *hadith* that the spirit of a Muslim is stopped (from entering Paradise or from being rewarded) until his or her debt is cleared. Someone present said: 'O Messenger of Allah, my brother has died leaving his young children behind. Shall I spend on them (and not pay the debt)?' He said : 'Your brother is under detention because of this debt. Pay the debt'. (Mufidul-Warithin, p. 40 as in Mishkat)

Rulings

(1) If, after payment of funeral expenses, the remaining inheritance is good enough to clear all outstanding debts, then all debts should be paid off without any discrimination. In case, it is not enough and the debt has to be paid to one single person, then whatever of inheritance remains, after defraying the cost of the funeral, should be given to him. As for what remains unpaid, it shall be upto him. He may forgo and forgive it if he so chooses, or he may postpone it for settlement in *Akhirah* (the life-to-come).

(Mufidul-Warithin, p. 38)

(2) If the inheritance as after payment of funeral expenses is not enough and there are several debtees to take care of, then we have to go in great details to determine who among them would receive what, and in

which proportion, and what sort of debts would be given priority over others. The best time to find these details out is when you need to know and the wisest course is to consult an authentic religious scholar entitled to give rulings. Tell him everything about the situation you are in and he will certainly resolve the question within the parametres of prescribed religious practice. If, for some reason, this is not possible, a careful study of 'Mufidul - Warithin' by Maulana Sayyid Mian Asghar Husain Muhaddith of Deoband will be useful since it has full details.[1]

(3) If, after the funeral, nothing remains of the inheritance, or whatever is left is not sufficient to clear all debts, the payment of remaining debts is not more obligatory on the inheritors. However, not simply that love so demands, but it is better and desirable too that, as far as possible, debts owed by the deceased should be paid off to give his soul relief on that account. If nobody comes forward to pay such debts, the debtees should

1. There is a lot of difference in rules governing a debt against the deceased which was established during his *maradul-maut* and that which was already established before that time. When you approach a religious scholar for a solution of this problem, do tell him as to which of the debts was established during *maradul-maut* and which was already established as such before that time and was it established through a confession of the deceased or through the testimony of witnesses. (Rafi Usmani)

patiently wait for the justice of their Lord in the world-to-come where every person shall have his lost right returned to him and whoever has held back a right which was the due of other shall see that his good deeds are taken away from him and given to those whose rights he failed to fulfill. But, it is much better that claimants too forgo and forgive their claim. This act of grace alone will bring them a reward of such magnitude that all possible good deeds of the debtor combined when given on the Day of Judgement will be unable to match the Divine reward for this act of forgiveness. The act of remitting a debt and the grace of giving more time to a penniless debtor have been highly praised in the Qur'an and *Hadith*, so forgiveness is the best.

(Mufidul-Warithin, p. 41)

***Hadith* :**

As narrated by Sayyidna Abu Hurairah رضی اللہ عنہ the Holy Prophet ﷺ said that a certain person used to give loans to people. His instruction to his assistant for recoveries was: When you go to someone poor, be lenient and forgiving (accept what is given, give respite or forgive), may be Allah Almighty treats us with the same leniency and forgiveness (in *Akhirah*). So, when he appeared before his Lord (after death), He forgave him. (Sahih Muslim, v.2, p. 18)

In yet another narration, it is reported that this person had no other good deed in his account except this one, yet all his sins were forgiven. (Ibid)

Sayyidna Abu Qatadah رضی الله عنه narrates that he heard the Holy Prophet صلى الله عليه وسلم say : Anyone who likes that Allah Almighty delivers him from the distress of the Day of Doom, he should deliver the poor from distress, or forgive them (their debt). (Ibid)

Paying Debts owed to Allah Almighty

Upto this point, we have talked about debts of living human beings that remain uncleared by the deceased. Then, there are the debts of Allah, that is, His rights which must be fulfilled. These are the *Fara'id* and the *Wajibat* or obligatory acts. For example, there may have remained some such acts - *Salah*, the *Fidyah* of fasts, *Zakah, Hajj, Sadaqatul-Firt, Nadhr* (vows), *Kaffarah* (expiation) etc. - which the deceased had not accomplished. For these, the rule is: If, after paying off all debts owed to human beings, some funds still remain and the deceased had made a will too that these rights of Allah due on him be cleared, then, these should be cleared off from one-third of the remaining funds. If this one-third turns out to be insufficient for full payment, then, pay whatever can be paid. It is not binding on the inheritors to spend anymore than one-third to liquidate the total due because the remaining two-third of the property belongs to the inheritors. Once the distribution is over, all sane and adult inheritors may elect, at their discretion, to spend from their respective shares and redeem the deceased from the burden of undischarged obligations and thus save the deceased from the

accountability of the *Akhirah* and, in the process, become personally deserving of Divine reward. Please note that it is strictly impermissible to spend the share of insane or minor inheritors for this purpose, even if they permit it gladly. It is also possible that all inheritors, if they so elect , distribute the remaining two-third of inheritance among themselves in accordance with the shares fixed by the Shari'ah and do no more. In this situation, the responsibility of the rights of Allah Almighty which remain unredeemed shall rest with the deceased. The inheritors will not be held accountable.

(Mufidul-Warithin, p. 39, and Islahi-Inqilabi-Ummat. v.1, p. 185)

Similarly, if that one-third of the property be just about enough to redeem all those unfulfilled rights of Allah Almighty, but the deceased has, in his will, asked for the redemption of some rights and not for others remaining, or allocated a lower amount of money in his will which was insufficient for the redemption of all rights; for instance, the one-third of the property was valued at $ 2000 which could redeem all such rights, but the deceased allocated only $ 1500 for this purpose in his will, in which case, the inheritors will be obligated to pay within the limit set by the will. It will not be necessary for them to spend the total of $ 2000 to redeem these rights. However, the deceased will incur the sin of not having made provision in his will for the redemption of all unfulfilled rights. (Dalailul-Khairat, p. 28)

Summary :

In short, there are three differences between debts of human beings (servants of Allah) and the debts of Allah Almighty (His rights over human beings) :

1. The liquidation of human debts does not depend on the will of the deceased. On the contrary, even if the deceased has made no will, it is obligatory to pay these debts after paying for the funeral expenses. As for the fulfillment of the rights of Allah Almighty, it depends on the will made by the deceased. If he does not make a will to this effect, the inheritors do not necessarily have to clear such debts.

2. The second difference is that there was no limit imposed on the payment of human debts. Once the funeral expenses have been paid, spending off the entire inheritance, if it comes to that, to clear the debts is obligatory. As compared to that, when it comes to redeeming the rights of Allah Almighty, all debts owed to human beings have to be paid first, following which, the rights of Allah Almighty have to be redeemed from only one-third of whatever remains of the inheritance. Apart from this obligation of one-third, the inheritors do not necessarily have to spend anymore.

3. The third difference is, as obvious, that the redeeming of the rights of Allah Almighty is obligatory only when all debts owed to Allah's servants have been cleared. (Mufidul-Warithin, p. 40)

Special Note :

Since this second kind of debt , that is, the redemption of the financial rights or claims of Allah Almighty, depends on will which, if not made by the deceased, requires no compliance. Therefore, we shall take it up again under "WILLS" immediately after, where the readers will find what has to be done to compensate for missed prayers, fasts and also a full listing of other rights of Allah in terms of quantities and measures.

The Execution of Valid Wills

Two of the four *seriatim* claims which it is obligatory to apply against the inheritance of a deceased person have appeared previously. These are:

1. The Funeral Expenses

2. The Payment of Debts

The necessary details of the third claim, that is, the will, are being presented here.

Saying that, "I make a will for so much cash or property," or, "Give so much cash or property to such and such person after my death," or, "Put it to such and such use," is the making of a will, whether said in sickness, or health, and whether the maker of the statement died of the disease which took away his life, or died later. (Bahishti Zewar)

If death was not mentioned at all, nor the word, "will'

was uttered, instead, what was said was no more than -"Give such and such thing from me to such and such person," or, "Put it to such and such use" - then, this is no will and the rules relating to a will are not going to apply here, because the Shari'ah of Islam recognizes only that will as valid in which the deceased has left some instructions to be carried out after his death. (Al-Durr al-Mukhtar, p. 568, v. 5)

Similarly, if somebody had saved money to build a mosque, or to have a well made for public use, or to give it out in the way of Allah or to present it as a gift to someone; or, had collected things or had money saved up for performing Hajj pilgrimage; then, as God would have it, he left this mortal world, a happening which would cause everything mentioned above to be included in his total inheritance and which, in turn, will be distributed among heirs. These will not be counted as the subject of some will since he did not give any such instructions to survivors which could be termed as 'the will'.

(Mufidul-Warithin, p. 29)

Valid and Invalid Wills:

Rulings:

1. Everyone, sane and adult, has the right to make a will against his property in a way that the inheritance which remains, after the payment of the funeral expenses and the debts, should be good enough to help execute that will within the mandatory limit of one-third. If the will was made for more than that, the heirs do not, of

necessity, have to fulfil it beyond the one-third, for the remaining two-third belongs only to the heirs as a matter of right. However, sane and adult heirs who wish to fulfil the additional portion of the will out of their respective shares in the inheritance may do so.

(al-Durr al-Mukhtar, Shami)

2. If somebody has no heir at all, he has the right to leave a will for everything that remains after the payment of the funeral expenses and the debts. If he has his wife as the only heir, a will upto three-fourth is correct. Similarly, if there is no heir of a woman, except her husband, a will upto half of the property is correct - because these are situations in which the rights of any heirs are not compromised.

(Bahishti Zewar, al-Durr al-Mukhtar, p.572, v.5)

3. If the amount of debt owed by the deceased is so high that its payment leaves nothing of the inheritance, then, every will, whatever the nature, is redundant and invalid. May be, if the debtees forgo some of the debt the deceased owed to them and this leaves some property open for distribution, then, the will is to be applied to the remainder upto the limit of one-third, the rest will go to the heirs. (Mufidul-Warithin, p. 63)

4. The will made by the minor or the insane is invalid under the rules of the Shari'ah. It is not obligatory to execute it even within the limit of one-third. (al-Durr al-Mukhtar, Shami, p.576, v.5)

5. If the deceased makes a will for any of his or her heirs, for example, mother, father, husband, son, or others, then, this will too shall be invalid, because the Shari'ah has itself fixed the share of every heir in the inheritance. This is what the heir will get. No heir can be given anything on the basis of a will so that the rights of other heirs are not compromised. However, if the deceased has no heir other than that particular heir, or, if the rest of the heirs are willing, it can be given by their permission. But, the permission given by persons, insane or minor, is not valid. Only sane and adult heirs can, if they so wish, give out from their own respective shares. (Bahishti Zewar, Mufidul-Waritnin)

6. A will which excludes one's entitled heir from the inheritance, or which seeks to curtail the heir's share in it, is also invalid. Executing such a will is categorically impermissible. Moreover, making such a will is a sin as well. (Mufidul-Warithin, p.57, al-Durr al-Mukhtar)

7. Also invalid is a will which calls for spending on a sinful purpose. Spending from the inheritance to fulfil such a will is not permissible even if it be with the permission of the heirs.

(al-Durr al-Mukhtar, Shami p. 605, v.5, Bahishti Zewar)

8. If the deceased made a will for his killer, before being killed or after being injured, the situation presents

two solutions, that is, if the killer was not minor or insane, this will too is invalid in many circumstances, and valid in some others. When confronted with some such problem, it is recommended that necessary action may be taken in consultation with trustworthy scholars of Islamic jurisprudence.

(al-Durr al-Mukhtar, Shami, p.569, 575.v.5)

9. If the maker of the will takes it back within his life-time, for example, he says, "I take this will back", or, "This will may not be executed", or, "I cancel this will", then, that will shall be rendered invalid, like it was never made. Until such time that the maker of the will is alive, he is fully entitled to invalidate[1] his will. Similarly, if he, during his life-time, acts in a way which indicates that he has gone back on his will, even then, the will shall become invalid. Some down-to-the-earth examples could be like when the maker of the will builds a house for himself on the very plot of land he had earlier bequeathed for someone; or, bequeathed household furniture, then sold it off later; or, bequeathed cloth yardage to someone, then went on to cut the same and had dresses made out of it for himself. All such situations will lead to the conclusion that he has gone

1. But, if he lies and says that he never made that will, although witnesses exhist and people generally know that the will was made, then this false refusal would not render the will invalid and, in addition to that, the liar-denier will be incurring a sin without the fun. (Mufidul-Warithin)

back on his bequeathal or will. As a result, the will shall become invalid. (Mufidul-Warithin, p. 64)

10. If the will was made for a particular plot of land, house, cloth, domestic animal, or something else, and which went out of his ownership somehow, or was wasted, or died, then, the will becomes invalid, because the particular thing for which the will was made does not exhist anymore. (Mufidul-Warithin, p. 64)

11. If the person for whom the deceased had provided cash or property in his will refuses to accept what was willed by the maker of the will and says, "I am not going to take it," then, the will shall become invalid. Now he cannot claim it later on. But, if this refusal took place during the life-time of the maker of the will, the will shall not become invalid, because the only valid acceptance or rejection of a will is what comes after the death of the maker. Pre-death acceptance or rejection is not valid. (al-Durr al-Mukhtar, Shami, p.577, v.5)

The Method of Executing Wills

After taking care of the funeral expenses (and after the payment of debts owed by the deceased, if that was the case), if there remains something left over, it should be seen whether or not the deceased has made a valid will concerning his inheritance. If he has not done so, the left-over property will all be distributed among the heirs,

because they are its rightful recipients in the absence of a will. And if the deceased had made a will, verbally or in writing, expressing his wish to have a mosque built after his death from out of his property, or a public well; or instructed that a certain amount be donated to a religious school or spiritual seminary; or requested that money or thing be given to a specified person; or asked that certain specified things be given in charity to the poor and needy; or, may be, thinking of some of the obligatory prayers and fasts he missed, he gave the instruction that *fidya*[1] (payment in redemption) be given against them after his death; or, conscious of the need to redeem some of the unperformed obligations on him as the due of Allah Almighty, such as the Hajj, the *Sadaqatul-Fitr*, any *Kaffarah* (expiation) or *Nadhr* (vow), he instructed that these should be 'paid' back after his death - then, all this counts as 'will' and the method of executing it is that the inheritance that remains, after paying the funeral expenses and debts, will be divided in three equal portions. Two portions (2/3) out of these will be given to

1. If *fidya* was not secifically mentioned, rather, the will simply said, "Offer so many prayers, or fasts on my behalf," then, this will is not valid because acts of worship, such as, the prescribed prayers and the fasts, which are to be performed physically, cannot be performed by anyone on behalf of anybody else. There is no proxy in *'Ibadah*. However, one can hope to redeem what he failed to perform through *fidya*. (Mufidul-Warithin, Rafi Usmani)

heirs only, as their due right, and which will be further distributed [2] over them in accordance with the rules set by the Shari'ah. One portion (1/3) goes to take care of the will, whether or not this one-third is good enough to execute the will in full.

Rulings:

1. If something still remains after the execution of all wills from this one-third, that too shall belong to the heirs. (Mufidul-Warithin)

2. For more than one will, the same rule applies, that is, execute as many of them as it is possible within the limit of one-third. Leave the rest because the fulfillment and execution of remaining wills is not incumbent on the heirs. (Shami, Bahishti Zewar)

3. The sane and adult heirs present on the spot can fulfill the remaining part of the will made by the deceased, if they wish to do so, but this has to be out of their own accord and from their own respective shares. However, it is not permissible to use the share of a minor, insane or absent heir in what is being spent over and above the limit of one-third. This is because the permission of a minor or insane person is not admissible Shari'ah-wise, and the mind of the one absent is unknown, may be he permits, may be he does not.

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2. The section on the distribution of inheritance among the heirs will follow immediately after the present discussion on wills.

Therefore, in the event that someone from among the heirs is absent, or is a minor, or is insane, spend one-third to cover the will and, after that, distribute the remaining two-third among all heirs in accordance with their shares fixed by the Shari'ah. Once this is done, anyone from among the adult and sane heirs is free to fulfill the remaining part of the will made by the deceased, at his discretion and from his share (or even by adding more from his own pocket.) (Mufidul-Warithin)

The Order in Executing Wills when More than One

Rulings:

If the deceased had made some wills which could not be implemented within one-third of the property and spending more was not authorized by the heirs, then, the wills which are more important in the sight of the Shari'ah should be implemented first. In case something is left over after such implementation, carrying out less necessary wills as well is obligatory. If there still remains something, it is also obligatory to carry out unnecessary wills too, as far as possible. For instance, if the deceased willed the payment of *fidya* for his missed fasts, and the payment of his unpaid *Sadaqatul-Fitr*, and willed the building of a public well, all at the same time, then, the *fidya* for fasts should be paid first because fasts are obligatory. After that, if something remains of the inheritance, pay from it whatever can be paid against the

Sadaqatul-Fitr. Leave the rest because this is necessary (*wajib*), not obligatory (*fard*). As for the building of a public well, just leave it out totally because this is not even necessary (*wajib*); it is simply desirable or recommended (*mustahabb*). Had there been some inheritance left, building this too would have become necessary. (al-Durr al-Mukhtar, Shami & Mufidul-Warithin)

If all wills carry equal effect, that is, the difference of being 'more necessary', 'necessary' and 'unecessary' does not exist between them, then, the will which was made first by the maker of the will should be fulfilled first. After that, if inheritance remains, fulfill the other; if nothing remains, just leave. For example, a will was made to pay *fidya* for fasts and prayers both. As both, being obligatory, are equal, therefore, the one willed first should be the one to be paid first. Take the case of a will asking for the performance of obligatory Hajj and the payment of *zakah* which cannot be fulled simultaneously. So, the one willed first shall be the one to be complied with first. (Some authentic scholars say that, in case Hajj and *zakah* cannot be taken care of simultaneously, *Zakah* should be given precedence and paid off). Take yet another example. In a situation when $1,000 were bequeathed for a mosque and another $1,000 for a religious school but the one-third is no more than $1,000, then, the first bequeathal shall be executed first because

none of the two is *fard* (obligatory) or *wajib* (necessary). Both are *mustahabb* (recommended). (Mufidul-Warithin, p. 60, 61; Shami, p.580, 581, v.5)

Special Note

The rule just cited above, that is, if all wills are of equal effect, the one made first shall be given precedence, operates when wills are not made for specified persons. If wills were made for specified persons - for example, one-third of the property was bequeathed in the name of A, then, one-third of the property was bequeathed in the name of B as well - the first will shall not be given precedence over the second one, instead of that, that one-third of the property will be distributed equally between A and B. (Shami, p.580, v.5)

This question is full of details and subsequent subtleties. When actually confronted with a question of this nature, it is better to act in consultation with expert and trustworthy religious scholars.

How to calculate the *fidya* of prayers and fasts

1. Daily prayers, including *witr*, will be calculated as six a day. The *fidya* for each prayer (*salah*) will be 1.62 kilo of wheat or its price. As a measure of precaution, give full two kilo. of wheat or its price. Thus, the *fidya* for prayers missed on one day will be a full 12 kilo. of wheat or its price.

2. The *fidya* of one fast is equal to the *fidya* of one *salah* (prescribed prayer), that is, 1.62 kilo - (precaution-wise: 2 kilo) - of wheat or its price. In case there was a vow (*nadhr, mannat*), other than the fasts of Ramadan, *fidya* for it will have to be paid as well.

3. *Zakah* will have to be calculated in terms of the number of years and the amount of holdings in each, according to which payment will have to be made.

4. If the deceased was unable to perform the obligatory Hajj, someone from his neighbourhood will be sent to perform Hajj on his behalf (*Hajj Badal*) and all expenses covering return transportation and boarding and lodging will have to be paid. If the one-third of inheritance is not sufficient to cover that, someone from a place costing less may be sent.

5. For every *Sadaqatul-Fitr* (fixed amount of charity tied with the fortunate completion of the fasts of Ramadan), 1.62 kilo - (precaution-wise: full 2 kilo.) of wheat or its price should be paid.

6. For any sacrifice (*Qurban* or *Qurbani*) missed, the price of one goat or one cow should be estimated as in that year and the price so arrived at should be given in charity.

7. If the correct number of *qada'* or missed (literally expired, dead, taken away or lost fully) prayers and fasts

and other obligations is not known, an estimated calculation should be made.

(Hila-i-Isqat by Mufti Muhammad Shafi)

Impermissible Wills: Some Examples

The rules described upto this point relate to wills which are, Shari'ah-wise, correct. What is false and invalid about wills was taken up alongside. Also invalid are wills in which the deceased has desired the spending of his wealth in what is impermissible, for example, making a will to celebrate the third, or the tenth, eleventh, twelfth, twentieth or the fortieth day following the death of the deceased; or to hold ceremonial gatherings of *Milad* or *'Urs;* or to have a reinforced grave or have a dome built over it; or to have a *Hafiz* (reciter from memory) of the Holy Qur'an hired on payment of wages [1] charged with sitting by the grave and reciting it so that the deed person in the grave could receive the reward out of such recital; or to deprive a legal heir; or to build a cinema house. One who makes such wills is a terrible sinner. Acting to fulfil such wills is also not permissible. (Shami, 605, v.5; Bahishti Zewar)

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1. Accepting wages for reciting the Holy Qur'an is *haram* (forbidden). The reward of such recitation against wages neither reaches the reciter, nor the deceased. On the contrary, one becomes an unwitting sinner. (Shami - Sharh al-'Uqud Rasm al-Mufti)

The Emphasis on Making Wills and Related Instructions

If someone has the *fidya* of missed prayers or of fasts due against him, or has not performed Hajj, or has not paid *Zakah*, or has failed to fulfil the *Kaffarah* (expiation) for an oath or to pay the unpaid *Sadaqatul-Fitr* or to clear off a vow (*nadhr*, *mannat*) or, for that matter, any act of worship, *fard* (obligatory) or *wajib* (necessary), which required financial coverage and which remained unperformed, then, subject to having enough money, it is necessary for such a person that he makes a will for the payment of what is due on these things well before his death. If one fails to do so, he will be in for sin. (Bahishti Zewar, al-Durr al-Mukhtar, p. 568, v.5)

Rulings:

1. A person who owes money to people, or who holds cash or things in trust which belong to others and for which there is no receipt or proof which could help the debtees and the trusters to take back what belonged to them, or who may have similar other matters under his supervision in which the absence of a will may cause the rights of people to be compromised, then, it is incumbent on and necessary for that person that he should spell out and place on record, written or verbal, a list of rights these people have, otherwise he will be committing a terrible sin. (Bahishti Zewar, Mufidul-Warithin, Shami)

There is no assurance of life. Who knows when the angel of death is going to knock at the door? So, be

prepared for death all the time -- this is the demand of faith; and when in good health, take the first opportunity to make a will about such matters. As in a *hadith* narrated by Sayyidna ‘Abdullah ibn ‘Umar رضى الله عنه , the Holy Prophet صلى الله عليه وسلم said, "A Muslim who has something regarding which he must make a will, then he does not have the right to spend even two nights in a state in which he does not have a written will with him". (Sahih Muslim, p.39, v.2)

2. If the legal heirs of a person are already rich, or they are likely to get so much of inheritance through their share in it that they will become very very rich, then it is recommended (*mustahabb*) for such a person that he should make a will regarding part of his property having it donated to mosques, religious schools etc., or leaving it for relatives who will not get a share in the inheritance. In other words, the will, if made, shall bring reward; and not making the will brings no sin. But, making a will for more than one-third of one's property is impermissible under all conditions. As a matter of fact, making a will for even less than one-third is better. (Bahishti Zewar, Mufidul-Warithin)

And if the legal heirs of a person are neither already rich nor does he have a property so large that the inheritance would make them any richer, then, it is recommended (*mustahabb*) that he should do nothing of the sort, that is, make no will that charities be given out of his property. He should leave all his inheritance for

the heirs, because the benefit these people, being in need, will receive from the property of the deceased will be twice as rewarding for the deceased as compared with charity on his behalf. However, if the will is necessary, such as the one for payment of *fidya* concerning missed prayers and fasts, then, making a will for that is *wajib* (necessary) under all conditions, otherwise it will be a sin. (Mufidul-Warithin, p.59, Bahishti Zewar, Shami)

3. It is also recommended (*mustahabb*) that a will be made to the effect: 'Please let my funeral be in accordance with the *sunnah* of the Holy Prophet ﷺ . There should be no wailing, mourning or crying on my death. All customs and conventions and innovations contrary to the Shari'ah should be avoided'.

If such impermissible doings are in vogue among the relatives of a person and there be the strong likelihood that what is prohibited will be what is going to be practiced there, then, acting to forbid these things becomes mandatory. (Mufidul-Warithin, p.58)

4. As for matters relating to the funeral, making a will for any of them, subject to their not being religiously forbidden or reprehensible, is permissible - for example, the wish to be buried at a certain place or the wish to have a certain person lead the funeral prayer. The heirs are not really bound to follow these instructions, however, if there is nothing repugnant to the Shari'ah, it is better to fulfill such a will. (Mufidul-Warithin, p. 59)

5. Making a will for a type of people to receive from the inheritance, people who openly disobey Allah and are involved in all sorts of sinful activities, is reprehensible (*makruh*). There is the overwhelming likelihood that these people will spend whatever they receive from the deceased on these very activities. If the deceased has made a will for this type of person, his share will certainly be given to him in accordance with the rules of a will, but the maker of the will is going to end up being a sinner. (Shami, al-Durr al-Mukhtar, p.605, v.5)

The Will: The Making of a Document

Known as al-*Wasiyyah* or *Wasiyyat Namah*, a simple method of getting a will started is to set up a thick enough diary or notebook giving it the title of 'Will' or 'Important Memoranda'. Divide the pages under separate heads given below allotting several pages to each head. (Most of these relate to religious obligations one has failed to perform while some others concern debts, due or owed; and trusts, held for others or kept with others; and the will itself. The present form is an indicator of essentials. The functional format is left to individual discretion.)

Obligations to be fulfilled

1. Number of prayers due
2. Amount of *Zakah* due
3. Number of Ramadan and *Nadhr* fasts due

4. Obligatory Hajj, if due

5. *Sadaqatul-Fitr* due

6. *Sadaqah* of price against sacrifices not offered in specified years (because sacrifices cannot be offered after the passage of the prescribed days of sacrifice - so what is *wajib* (necessary) later is the *Sadaqah* (giving in charity) of its price.

7. *Sadaqatul-Fitr* due on behalf of one's children

8. The *Sajdah* of *Tilawah* due (special prostration made during the recitation of the Holy Qur'an at places so indicated in the text.)

9. Number of *Kaffarahs* (expiations) of oaths due

Debts

10. Debts to be paid to others
11. Debts to be realized from others

Trusts

12. Trusts held for others
13. Trusts kept with others

The Will

14. Al-*Wasiyyah* or *Wasiyyat Namah*

After having set up appropriate subject headings, keep recording whatever state of affairs you are in. In case you have no obligations to fulfill under one of these headings, just say so. If otherwise, write down the details

of the unfulfilled obligation. Then, as you go along keep subtracting what you keep fulfilling during your life-time. If something extra becomes necessary, add it up.

In short, what is important is that a full account in writing under each head should be ready at hand, which should also include a note under the section entitled, 'the Will', with a request to refer back to previous entries in order that payments could be made in accordance with what and how much has been recorded as due. In addition to that, keep making entries in the Will in the light of your circumstances making deletions and additions as and when needed. It is wise to let someone trusted know where to find it, so that, any time the call of death comes, the rights of Allah and the rights of human beings could be fulfilled in peace and the person concerned remains free of any onus from the present life and in the life-to-come.

Giving gift or charity during a disease resulting in death amounts to making a will

It is hoped that the rules of will have made it abundantly clear that a will, made in *maradul-maut*,[1] or in health, is governed by one single rule, that is, it is legally applied to only one-third of the property which

1. *Maradul-Maut* : the disease in which the patient dies, details of which appear under the next heading. (Rafi Usmani)

remains after the payment of funeral expenses and the debts. Every sane and adult individual has a standing right to bequeath his property upto the limit of one-third to anyone before death. The remaining two-third of the property goes to heirs as their due. So, the Shari'ah has ruled that every will which curtails this due right of the heirs is null and void. It is to safeguard this right of theirs that the Shari'ah has also imposed some restrictions on the giving of gifts and charities during *maradul-maut* by a dying person, a summary of which follows.

Allah Almighty has given to every sane and adult person the right to give to anyone he chooses as much money, material and property as he wishes, but well before *maradul-maut*. He can give more than one-third, even the whole of it, without any restriction. Whether the recipient is a heir, or some other relative, or a perfect stranger, it does not matter. The recipient becomes the owner all right. However, the condition is that he should separate whatever he wishes to give from the rest of the property he owns, and then give it to the person he wishes should have it, making sure that it has actually passed into his possession. Otherwise, if he gives what is shared, or fails to bring about effective possession, then, this act of giving will not be valid in the sight of the Shari'ah, that is, the giver shall continue to be its owner and it will become part of the inheritance left by him

after his death. The recipient so named will get nothing. (Mufidul-Warithin, p.42)

But right from the time *maradul-maut* begins, that is, the disease in which the sick person will pass away from this mortal world, the claim of the inheritors gets somewhat tied up with his property and the sick person does not continue to hold full control over it. Now, if he were to present someone with a gift, or to give in charity, then, this giving will fall under the same rule which governs wills. In other words, the conditions and the limit based on which the will is correct shall be the identical conditions and the limit upto which this giving too will be considered valid; and circumstances under which a will becomes invalid shall be the circumstances under which this giving too shall become null and void.

To sum up, all gifts and charities given during *maradul-maut* shall fall under the rule governing wills. The restrictions imposed on wills shall apply here as well. The *masa'il*, or the problems and their rulings which follow are based on this very principle:

Rulings:

1. Similarly, giving more than one-third of one's property during *maradul-maut* and making it free, for example, gift, *fidya* or charity, is not correct, because this undercuts the rights of heirs. If more than one-third was given, this act of giving will not be correct until such

time, after the death of the testator, when all heirs approve of this. The fact is that the heirs have the right to take back whatever exceeds the one-third. As for the minor and the insane, their permission, even if they give it, is not valid. And to give to any heir, even within the one-third and without the permission of all heirs, is not correct. All aspects of this rule stand operative only when what was to be given was given within the life-time of the giver who had made sure that it has passed on into the recipient's possession. In case one just gives as far as 'giving' goes, that is, simply says verbally or in writing, "I have given this much of my property to such and such person" - but, the actual possession has not been taken - then, after death, that act of giving will be absolutely null and void. That person will get nothing. The entire property rightfully belongs to the heirs.

The same rule holds good when things are given in the way of Allah and invested in righteous deeds like setting up a *waqf* (endowment) and its likes, during *maradul-maut*. So, giving out any more than one-third of the property without getting anything in return is just not correct; and giving it to an heir, even from within the one-third, is not correct either.

(Bahishti Zewar, al-Durr al-Mukhtar)

2. Here is a case study. Some people come to visit the sick person during his *maradul-maut*. They stay

overnight, then prolong it for several days and keep being entertained out of what belongs to the person they came to visit. Now, there is no problem if their stay is necessary to take care of the sick person. But, in case there is no need for them to stay, then, spending any more than one-third to cover the expenses on their feeding and entertainment is not permissible. And if there be neither the need nor those people be other than the heirs, then, spending even less than one-third of the property is totally impermissible. In other words, it is not permissible for those people to eat of the property of the sick person in his *maradul-maut*. Nevertheless, it is permissible if all heirs agree and approve of it.

(Bahishti Zewar)

3. When in *maradul-maut*, one does not have even the right to forgive the debt someone owes to him. If it was an heir who owed to him and he forgave it, then, it was not forgiven; and if he forgave some non-heir, then, whatever part of the property is in excess of the one-third will not stand forgiven without the permission of the heirs. (Bahshti Zewar)

4. It is generally noticed that a dying wife would forgive her dower (*mahr*). This act of forgiveness is also not correct without the permission of all heirs because this forgiving is during *maradul-maut* and for an heir (the husband), which would amount to compromising the

rights of other heirs.

(Bahishti Zewar, Islah-i-Inqilab-i-Ummat, p.238, v.1)

5. If the person in *maradul-maut* confessed that he owed a certain amount to a certain person, or confessed that he has received the amount a certain person owed to him, then, this confession is valid in some situations and invalid in some others, because such confession curtails the share of the heirs. Therefore, when a situation like this actually comes up, it is advisable to consult an expert and reliable religious scholar and get a solution of the problem from him. Please refrain from acting in accordance with your own inference. (Details on this subject appear in Mufidul-Warithin by Maulana Saiyyid Mian Asghar Husain Muhaddith of Deoband and may be seen there.)

Special Note

Diseases through which one comes out cured shall be flatly counted as one's state of health and all spending made during the period one was afflicted with those diseases shall be in force and operative. It means that any commitment made with somebody or any gift or charity given to someone or any debt forgiven and several other things of this nature shall be correct and valid, whether those diseases were major or minor. (Mufidul-Warithin)

How to tell when *maradul-maut* begins?

Maradul-Maut (literally, 'the disease of death' or

'death-disease') is a juristic term of Islamic law and signifies the disease suffering from which one leaves the mortal world. While living, it cannot be said with absolute certainty as to which disease it is that will take a sick person away from this mortal world. (Mufidul-Warithin)

Rulings:

1. If a person suffers from a disease and dies in it, the state of *maradul-maut* will be counted as to have begun from the time one started suffering from that disease. But, a disease which continues for a whole year, or more, will not be counted as *maradul-maut* from its start. Instead, *maradul-maut* will be counted from the day when the disease became acute, leading to the possibility of death. And it will be from this day that the rules of *maradul-maut* stated above shall become operative. So, if a person suffered from chronic diseases such as tuberculosis, or paralysis, or hemorrhoids, then, for a week, the disease became so acute that he died of it, in which case, the duration of *maradul-maut* will be counted as one week. All dealings made before that, such as gift and charity, will be taken as perfectly permissible and very much like what is done in one's state of health. (Shami, al-Durr al-Mukhtar, p. 579, v.5, Mufidul-Warithin)

2. A disease in which the patient went out normally to offer his prayers in the mosque, or went out to the

market shopping for groceries, or kept doing one or the other chore within the house, that is, he was not technically confined to bed, then, that disease too will not be counted as *maradul-maut* right from its start.

Similarly, the disease of a woman who kept doing her home chores will not be counted as *maradul-maut*. For example, during the course of many days, she used to run a temperature every third or fourth day. The disease was not that acute. Then, after a month, she was hit by high fever which did not recede for eight days and she died of it. Thus, the eight days will be taken as the duration of *maradul-maut*. The days of the month during which she ran temperature, will be counted like days of health and all dealings made during those days, such as gift and charity, will be permissible and correct. (Mufidul-Warithin)

In short, a disease in which the patient dies, and the duration of that disease be less than a year, and in which one cannot take care of himself, is what is known as *maradul-maut*. (Mufidul-Warithin)

Ruling:

If a woman dies during delivery, *maradul-maut* will be counted from the time the pains started.

(Mufidul-Warithin, Bahishti Zewar)

Disaster, Despair and Imminent Death : Rulings:

1. If on board a ship or boat, there comes a storm leaving no hope of survival and making death imminent; then, the ship or boat drowns and people die - this will be a situation in which the time taken by the prevailing state of despair or the loss of hope in life will be considered as *maradul-maut* in the case of such people. Here too the rules of *maradul-maut* will remain the same as stated earlier. But, in the event that the ship or boat survives the storm, all dealings conducted during the state of despair will be correct and fully enforceable. (Mufidul-Warithin)

2. The condition of a person who has been condemned to die and is marking his time in jail will not be taken as similar to *maradul-maut*. But, from the time he is taken out of the jail on his way to the death-cell where he is put to death, then, the time-span between his exit from the jail and his death shall be covered by the rule of *maradul-maut*. And if, for any reason, his date with death was postponed on that day, or the very sentence of death was cancelled, then, the state of his exit from the jail and reaching the death-cell shall not be covered by the rule of *maradul-maut* and the dealings carried out during this state will turn out to be correct and operative. (Mufidul-Warithin)

The *Wasiy*: the Executor of Will

The person who is appointed by the maker of the

will to take charge after his death to pay debts from the inheritance, distribute the legacy and take care of matters relating to his children as his deputy and guardian is called the '*Wasiy*' (trustee). If the person made a *Wasiy* accepts the charge even verbally, it becomes incumbent on him; or, if he does something which indicates his willingness to become a *Wasiy*, even then he becomes the *Wasiy*.

The *Wasiy*, however, does have the right to refuse to become a *Wasiy*, but this has to be within the life-time of the maker of the will. However, he will not have this right after the death of the maker of the will.

(Mufidul-Warithin, p.65)

If a person was made a *Wasiy* for some matters while other matters were neither mentioned, nor someone else was made a *Wasiy* for them, in which case, the person named as the *Wasiy* for some matters shall be taken as the *Wasiy* for all matters. If two persons have been made the *Wasiy* in all matters, both of them should work together. If only one person disposes matters unilaterally, that will be impermissible. However, if just one person acting alone goes ahead and takes care of funeral arrangements and fulfills the immediate needs of the family of the deceased, that will be permissible and valid. (al-Durr al-Mukhtar, p.616, v.5 & Mufidul-Warithin)

To be a *Wasiy* and to be honest at the same time is really something very hard to do. So, one should avoid the charge as far as possible. If one has to do it, one should never say yes unless the circumstance are extremely compelling. In case, he does finally agree to take the responsibility because of some dire need or wise consideration, he should constantly fear being accountable before Allah and apprehend being punished in the Hereafter for any breach of trust, and then do his duty with full honesty having the highest concern for the welfare of the legatees. Spending trust funds needlessly like free wealth and disposing things like an owner is just not permissible. However, should the job of management be so time-consuming that one cannot get away to make a living for himself, in which case it is permissible to draw money from the property of the testator for personal maintenance within the limit of needs. When a situation like this comes up, please consult reliable religious scholars. (Mufidul-Warithin, p.65)

The Distribution of Inheritance Among Heirs

Details about three out of the four *seriatim* claims which are obligatory against the inheritance of the deceased have appeared previously, that is, the coverage of funeral expenses, payment of debts and the execution of valid wills. Taken up now is the fourth claim or right - 'the distribution of inheritance among heirs'.

After valid wills have been executed upto the limit of one-third of the inheritance, whatever property remains falls under the ownership of all heirs of the deceased, and this whole will be distributed among them in accordance with the shares fixed by the Shari'ah.

Ruling:

If the deceased had no debts to pay, nor had he made some will, all property that remains after the payment for the funeral will be distributed among heirs. And if the deceased had left some payable debt, but no will to be executed, everything that remains after clearance of the debt will go to the heirs. (Al-Durr Al-Mukhtar)

The Shari'ah has itself fixed the share of each heir. Nobody has the right to make changes, modifications, additions or deletions in it. However, the Shari'ah has, in its own way, seen that the share of each heir does not remain the same under all conditions. Instead, it has fixed different shares under different circumstances. In other words, it has altered the ratio of their shares on the basis of any increase or decrease in the number of heirs. Some heirs cause the share of some other heirs to be either totally eliminated, or reduced. Relevant details appear in texts of the Science of Inheritance. These cannot be taken up here because the Science of Inheritance is a regular field of knowledge in its own right with so many refinements that it is difficult for

everyone to understand its implications.

So, in the event of some one's death, the safest course is to write down a complete list of his parents, sons and daughters, and the husband or wife, whosoever of them is alive at the time of such death (even if living abroad in more than one country), giving their numbers, and their relationship to the deceased. Then, approach some trustworthy *'Alim* or *Mufti* who has the necessary expertise in questions relating to inheritance and ask him, in writing or in person, about the shares of inheritors. Once this becomes available follow the method suggested there and distribute the inheritance as fixed. If, at the time of the deceased person's death, some of the heirs listed above may be alive and may be some are not alive, in which case, write down the number and the nature of relationship of other relatives of the deceased. Make clear statements about any real brothers and sisters of the deceased, or of those who are from the same father but different mother, or of those who are from the same mother but different father. This is important and should be clarified, separate and distinct. Step parents and step in-laws and other relatives from the in-laws' side are not heirs under Islamic Shari'ah. They should not be included in the list.

If the heir of a deceased person expires before the

distribution of the inheritance, his share will be distributed among his heirs, therefore, it is necessary to include this expired person in the list.

The rule governing the death of several relatives in one accident

If several relatives die in some accident and it is not possible to determine as to who among them died first or last, for example, several relatives were drowned all together while travelling at sea, or died in a car or bus accident, or under the debris of a building which collapsed - and it is not possible to determine as to who among them died first or last - then, under this situation, none of them will inherit from the other. Islamic law will take them as having died all together, therefore, no inheritance will pass from one to the other. The inheritance will be distributed only among the surviving heirs. (Mufidul-Warithin, p. 70)

If the husband dies while the wife is observing her *'idda* of divorce, does she inherit or does she not?

If the wife of the deceased was observing the *'idda* of divorce while he died, she will inherit in some circumstances, and she will not in some others. Details regarding this have appeared earlier and may be consulted there if needed. In case the course of action in

a particular case does not still become clear fully, please consult religious scholars you trust.

A missing heir and his share in the inheritance

The heir reported missing before the expiry of the deceased and who cannot be traced, to determine whether alive or dead, is known as '*mafqud*' or a missing person. The Islamic law governing such a person is that his share in the inheritance should be held in trust so that he can take it when he comes. If he does not return, so much so that the legal time limit for waiting expires and the authorized Muslim ruler declares this person as 'dead' in accordance with rules set by the Shari'ah, then, the share being held in trust will also be distributed among the heirs - not among the heirs of the missing person. However, whatever belongs to the missing person himself will certainly be distributed among his present heirs. (Islah-i-Inqilab-i-Ummat, v.2, pp. 213-218)

There are a lot of details inherent in this question as well. When one actually faces a situation like this, it is advisable to act in consultation with a trustworthy religious scholar who is entitled to give relevant ruling in such matters.

In the case of an unborn heir, the distribution of inheritance will be held in abeyance

If an heir of the deceased is still in the womb of his

or her mother when he dies, the yet-to-be-born child holds a share in the inheritance according to Islamic law. But, in the absence of the certain knowledge about the child being a boy or girl, the inheritance should not be distributed until the child is born because the share of a boy and a girl is not equal. In addition to that, unless it is definitely determined whether the child will be a boy or a girl, the shares coming to other heirs can also not be determined with any degree of certainty in many situations. If the inheritance was distributed on the presumption that the child will be a boy but, later on, when the new-born born is a girl, the whole calculation of shares and their distribution will have to be redone from the very start. (Islah-i-Inqilab-i-Ummat)

Rulings :

1. The killer does not inherit from the person he has killed. In other words, if the deceased was killed unjustly ('*zulman*') by a relative who was his heir Shari'ah-wise. the Shari'ah has excluded him from the inheritance of the person killed by him because of his act of killing. It does not matter how close a relative he may be. For instance, he may be a father or a son--still, he will not remain an heir anymore. However, the condition is that the killer be sane and adult. If the act of killing was carried out by a non-adult or insane person, then, he will not be excluded from the inheritance. (Sharifiah, Sharh

Sirajiyyah, p. 11-12)

2. Inheritance does not become operative between a Muslim and a *Kafir*, that is, a Muslim cannot inherit from a *Kafir* and a *Kafir* cannot inherit from a Muslim. It does not matter how closely they are related, not even when they happen to be a father and a son. (Sharifiah, Sharh Sirajiyyah, p. 14)

COMMON FAILINGS IN THE DISTRIBUTION OF INHERITANCE

The Shari'ah of Islam rules that all claims on the inheritance which it is mandatory to liquidate must be paid off as soon as possible and the remaining inheritance should be distributed among the heirs. Delay breeds too many complications and suspicions. There are times when excessive delaying results in almost unsurmountable complexities in the usual equitable distribution of inheritance which could border on the compromising of some heir's just right.

Patently absurd are the sentiments that a quick distribution of the inheritance of the deceased will bring social censure - 'look at these people, they were just waiting for that death in the family so that they could grab his property! - but, given the command of Allah Almighty, all such whims and sentiments are ineffectual. All inheritors should be told that the distribution of inheritance is done to obey the command of Allah

Almighty and that it has to be carried out as soon as possible.

Given below are some common failings prevailing all over in our Muslim societies, specially about the prompt distribution of inheritance. Please look at them with concern and seek to correct what must be corrected.

Not paying debts owed by the deceased

It is commonly observed these days that a debt proved to be due against the deceased Shari'ah-wise, other than a debt for which documentary proof exhists, is hardly paid from the inheritance. In fact, people flatly refuse to pay such debts as a convenient measure. This is quite similar to the attitude of people who go back on their word of honour and refuse to pay debts owed by them to the deceased. Both these practices are rank injustice. The case of the deceased is special; if the deceased is under debt, his heirs should realize that the soul of their departed relative shall remain detained in suspension before it could be admitted into the Paradise until such time that the debt has been paid off. Who would like to bring upon one's own dear relative a deprivation so terrible? (Islah-i-Inqilab-Ummat p. 242)

Not executing valid wills

Another lack of concern becoming common is that people do not care enough to respect the valid wills of the deceased, although the Shari'ah has given the right of

making wills upto the one-third of inheritance which is owned by the maker and once a will is made nobody has the right to interfere in its execution. If the valid will is not executed, contrary to the wishes of the deceased, this failing will usurp his rights and thus the right of a servant of Allah shall remain unliquidated. Therefore, great care should be taken to fulfill the will of the deceased. However, if the deceased has made a will towards something impermissible, it will not be permissible to execute such a will. (Thanavai, Islam Haqiqi, Wa'z)

Giving compensation for missed prayers and fasts from the combined inheritance without a will made for that purpose

There is yet another shortcoming. Some people, in an euphoria of piety, would go ahead and pay off the compensation (*fidya*) of prayers and fasts missed by the deceased from the combined inheritance in absence of the necessary will to that effect, or give *zakah* on his behalf, or arrange to have someone perform the Hajj due on him, despite the fact repeatedly stressed earlier that an heir who, in the absence of a will made by the deceased, would still like to pay for *fidya*, *zakah* or Hajj on behalf of the deceased, should do so from his share in the inheritance or from what he already owns personally, an act which has great merit. But, giving out from the share of other heirs without their permission is not allowed, and giving from the share of the non-adult and the insane

is not allowed even with their permission.

(Islah-i-Inqilab-i-Ummat, v.1, p. 239)

Ignoring the need to pay compensation for missed prayers and fasts:

Another failing is that the heirs would, in the event someone dies without making a will, blow up the inheritance left by the deceased on heads of expenditure much less in importance than the compensation of missed prayers and fasts, going to the limits of spending wastefully and purposelessly, even in staging impermissible customary functions and on self-designed acts in the name of religion for which there is no precedent or sanction there. The tragedy is that people hardly care to cut down on other expenses and give out something from their share of inheritance as *fidya* on behalf of the deceased, or arrange to take care of the cost of unpaid *zakah* or unmade Hajj on behalf of the deceased.

Although, as seen by some jurists, the deceased person does not get absolved of his missed religiously obligatory acts through such payment made by others without his will to that effect. But, other jurists say that he is so absolved. As for the jurists who take the first position, they too admit that the merit and reward of this act will anyway reach the deceased. Thus, being certainly beneficial, it is not unlikely that this reward may cancel the punishment for the deceased person's act

of abandoning his religious obligations.

(Islah-i-Inqilab-i-Ummat, p. 200, vide Al-Radd al-Mukhtar)

The Device of Waiver against the payment of compensation

In some rural areas of Muslim countries people have a custom called *'daur'* or 'the *hilah* of *isqat*'. *'Hilah'* is a device or stratagem, and *'Isqat'* is waiver. Hence, it is a contrivance to escape compliance while still being within the parameters of religious ramifications. So, the custom is that some people would sit in a circle and the heirs of the deceased deposit some cash inside the circle. The Imam of the mosque who is positioned inside the circle takes the cash, recites some words in Arabic, and then gives the money to a person in the circle who gives it to the second who gives it to the third, and like this the money passes on from the next to the next. Ultimately, the money returns back to the first man. The money is circulated in this manner three times. Then, it is distributed off, half to the Imam and the other half to the poor. At the end of the exercise, the ignorant participants are told that this custom relieves the deceased from all his missed religious obligations, such as, the prescribed prayers and fasts, *Zakah* and Hajj and everything else incumbent on observing-practicing Muslims.

There is no doubt about the exhistence of a particular

method of such waiver in the writings of Muslim jurists, but people just do not know the conditions attached therein, nor do they at all abide by it. There is a whole corpus of Islamic rules governing the area of missed religious obligations which is simply ignored. What has been done is not more than an easy prescription to get rid of all religious obligations through this convenient custom. What can be achieved by a handful of cash hardly warrants that somebody should go about labouring with a life-time of prayers and fasts!

Please let this be very clear that some Muslim jurists had suggested this device of waiver for someone who had, by chance, missed some prayers and fasts and did not get the opportunity to make up for them during his life-time, and who could only make a will at the time of his death without leaving enough of inheritance from the one-third of which his heirs could pay the *fidya* or compensation of all his missed prayers and fasts. What was not intended is the situation that the deceased has enough assets in his inheritance which the heirs very conveniently devour among themselves and then cheat God and the human beings He created by dishing out a handful of money under the cover of false devices. This has been made very clear in major books of Islamic jurisprudence, such as, Al-Durr Al-Mukhtar & Shami

where this device is hemmed by other conditions as well, which are totally bypassed. This voodoo-like exercise never helps the deceased, nor does he get deobligated of everything he had been obligated with. Being absurd and ineffectual, this act results in nothing but a tasteless sin for the actors.

In short, it is possible that the initial introduction of this device had some correct legal bases, but the way it has been vulgarized into compelling custom is certainly impermissible as it breeds many social ills, details of which can be seen in '*Hila*-i-*Isqat*' by Maulana Mufti Muhammad Shafi, the late Grand Mufti of Pakistan.

Making a will to have funeral prayers led by a particular person, or to be buried in a particular place

There are people who would make a will that a certain named person should lead his *janazah* prayers, or ask to be buried at a place indicated in the will. What happens is that the heirs take great pains to fulfill such demands in the will which sometimes results in the contravention of obligatory religious rules. Please remember that such wills are not binding in accordance with the Shari'ah of Islam. It is permissible to do what the will calls for only if one does not have to act against the clear rules of the Shari'ah, otherwise, carrying out

such provisions in the will is not permissible.

(Islah-i-Inqilab-i-Ummat, v.1, p. 243)

Not distributing the inheritance

A grave shortcoming becoming common these days is that the inheritance of the deceased is not distributed as it should be. Whoever holds whatever assets there are turns into their owner overnight. There are excuses after excuses to render what is unlawful to hold as something lawful for the usurper. It is sad, but there are even educated people who ride into the same boat. They think they are all one, same family, same people, everyone can share and use things around, why distribute? This interpretation can only be advanced by the usurping possessor of assets for this is to his advantage.

Other heirs, being young or dependent, demur and say nothing, but the truth is that nobody allows this to happen with an open heart. This surface permission is no act of will and pleasure. Based on this, the act of one heir, that of taking possession of the entire inheritance, becomes totally *haram* and impermissible, specially so when some heirs are non-adult or insane, or are absent. As for the absent, nobody knows about his permission, and the permission of the non-adult or the insane, even if given clearly and with pleasure, is not legally valid. So,

one must fear the punishment of the grave and the punishment of the Hell and abstain from any injustice and usurpation and act straight by seeing that all heirs get their due rights in accordance with the dictates of the Shari'ah. (Thanavi, Wa'z: Islam Haqiqi)

Running a business on usurped inheritance

Another failing commonly seen is that an heir who runs a business during the life-time of the deceased remains in control of that business even after the death of the owner. He simply takes over, runs it, makes it grow and yield profits, all done without the permission of the other heirs, notwithstanding the non-adult heirs whose permission is not valid. So, when the time comes for the ultimate distribution of inheritance at some fairly later stage, disputes arise about the original capital and the recurring profits. Distributing assets becomes a painful process. The fact is that there are great many complications in determining the profits Shari'ah-wise. Therefore, the rule is: Distribute first, then go in business. Do it under mutual consent, combined or separate. The guardian of the non-adult can transact on his behalf either way.

The injustice of depriving girls from the inheritance

That some people do not give sisters and daughters their share in the inheritance is certainly an act of rank injustice. Just because they are given gifts and things at

the time of their marriage, they presume that such givings were enough to take care of their rights. This is totally incorrect; gifts never cancel the right to receive from the inheritance. It is obligatory to give sisters and daughters their share in the inheritance and any effort to exclude them from it is *haram* (forfidden) and is also an act of tyranny committed against them.

(Islah-i-Inqilab-i-Ummat, p.241)

Asking sisters to forgo their share in the inheritance

This is an injustice one would witness even in families which are fairly well-informed about the dictates of their Faith. Those who make sisters forgo their share in the inheritance should know that a formal nod of approval, and 'agreement', from sisters to the effect that they forgo their share in the inheritance is not enough and will not absolve those who ask them to do so of their responsibility. Unfortunately, sisters consider demanding their share in the inheritance as something derogatory to their position, which is a legacy of the days of Ignorance. They still fear that their brothers will become sore with them, and that people in the larger family circle will taunt at them. This custom is blandly pagan and quite deplorable that it has survived so long, resulting in silencing the voice of these oppressed women. If a tyrant who does that gets away by not having been punished right here in this mortal world,

let him not forget that the final day of reckoning is sure to come, about which Allah Almighty says: ولعذاب الاخرة اكبر that is, the punishment of the Hereafter is greater than the punishment of the mortal world.

To begin with, the Shari'ah does not recognize the simple verbal declaration of sisters as formal valid proof of their intent to forgo their share. Chances are that their heart is not behind it. Secondly, even if there is a rare woman who is all too happy to forgo her share like this, even then, this act of making sisters forgive and forgo is against the Islamic principles of justice as there is no way one could find out that this was done willingly and with a happy heart. Moreover, this also amounts to promoting and approving an oppressive Hindu custom which happens to be very much against the Muslim way. Therefore, it is better to stay away from such conduct.

Some people say that sisters let brothers have their share in the inheritance in consideration of gifts they keep receiving on different ceremonial occasions from them, which is a sort of transaction. But, this is wrong since it does not carry with it the agreement of their sisters. They do so because they are helpless against custom. Then, the quantity and the type and the value of such gifts is not known. So, this transaction, that is, the act of buying and selling, is not correct.

In short, all devices engineered to devour the share of sisters who cannot speak up against this tyranny, and all stratagems to make what is forbidden as lawful, have been flatly rejected by the Shari'ah as null and void. The safest course is: Open up your heart, be honest, give them their full share and see that it passes into their actual possession.

On excluding a widow from inheritance if she remarries

Not uncommon at places is the custom that a widow, who marries again after the death of her first husband, is deprived of his inheritance. Such a widow, just to be sure that she does not miss her share in the inheritance, does not remarry, goes on to live with the tragedy of widowhood for the rest of her years, added thereto being the not-too-sympathetic treatment at the hands of the relatives of the late husband. Let us not forget that this too is open injustice and has been strictly forbidden. The fact is that the widow, even if she remarries, remains the owner of her share in the inheritance.

Depriving a widow from her share because she belongs to another tribe

This custom practiced in a certain part of Pakistan is based on ignorance. This is an injustice as the Holy

Qur'an has certainly made the share of a widow obligatory irrespective of whether she comes from the family of her husband for from some other family.

A widow taking possession of the whole inheritance without the right

Another form of injustice shows up when some women who, after the death of their husbands, take possession of all immovable property left by them under the impression that they are the owners of everything. The fact is that anything that their late husbands gifted to them during their life-time (before their last sickness) and handed it over to them as being theirs is, no doubt, theirs. But, the rest of it is combined inheritance. According to the rules of Shari'ah, this will be distributed among all heirs as a matter of obligation. (Islah-i-Inqilab-i-Ummat, p. 241)

Stealing from the inheritance

Also deplorable is the act of an heir who just sits on whatever he can lay his hands on. There is no stealing and no usurping in inheritance. Those who do it should not forget that they will have to throw it back on the Day of Doom. (Ibid)

In case a bride dies while at the home of her parents, or the home of her in-laws, there is a rule about her personal effects

A terrible injustice is committed in the event of a

bride dying at the home of her parents when people from her husband's family take possession of everything, such as effects belonging to her personally which she brought with her as her marriage portion; and if she dies at the house of the in-laws, the husband or his relatives or guardians take over the whole thing. All this is absolutely and totally impermissible. Everyone involved will have to account for every cent thus appropriated here, in the Hereafter. It should be borne in mind that all heirs of the bride have a share in her marriage portion and in any part of the inheritance which comes to her. This includes her husband also, and the parents of the bride as well - irrespective of the place where the bride died. (Islah-i-Inqilab-i-Ummat, v.1, p. 242)

When the trustee usurps inheritance

Not too uncommon is the happening when a particular heir would use his seniority or position among the rest of the heirs to take possession of the entire property. Passing as its guardian and trustee, he will go on taking unilateral decisions which affect the property and refuses to distribute the property even if so demanded by other heirs, some of whom may be orphans. The Qur'an says: فَمَا أَصْبَرَهُمْ عَلَى النَّارِ (How enduring they must be on the Fire!) (2:175). Devouring what belongs to orphans should make anyone blush. But one who is reckless enough to ignore the warning of the

fire of Hell will certainly have a great deal to find out on the Day of Doom, standing there to account for everything so usurped and misappropriated.

Asking people to pardon and forgo any of their rights, if they have remained unfulfilled

These are known as *Huquq al-'Ibad*, that is, the rights of the servants of Allah. This is serious matter because these rights cannot be forgiven by anyone other than the person to whom they belong. The Holy Prophet صلى الله عليه وسلم has said: 'Whoever has son right of a brother (a Muslim, or any human being) pertaining to his sense of honour, or to something else due against him, should go and have it forgiven by him this very day, before the Day (of Doom), when he would have no *dinar* and *dirham* to use.' (Mishkat, on Injustice)

The rights of the servants of Allah are of two kinds - financial and non-financial. Rules covering financial rights have appeared earlier under Inheritance, Debts, Wills and the Distribution of Legacies. A description of non-financial rights is given below:

Non-financial rights of people

When you live in a complex human relationship with your relatives, friends, acquaintances and many others, something is likely to go wrong in mutual dealings which may affect rights which are obligatory. Naturally, anyone whose right gets compromised feels the pinch of loss. There are cases when misgivings arise and relations

get broken. There are other occasions when tempers go out of control and the other party ends up hurting physically or morally, just because of envy or spite. Sometimes the evil habit of back-biting, lying and cheating causes loss of honour or property to someone. There are many things like these which cause situations when someone's rights are compromised, giving him pain, which is a grave sin. The Holy Qur'an and the Sunnah have prohibited such conduct in strong terms giving warnings of severe punishment in the Hereafter. Therefore, it is absolutely necessary that one should do a real survey of one's life, and of things he has been doing all along, and do something to correct or make amends for what has gone wrong, much before death overtakes. Miss no time, go and ask the person who suffered at your hands to forgive you for what happened. Not only that, one should also turn to Allah Almighty and seek His refuge against such sins, moved by genuine remorse of the heart, repenting and praying that Allah forgives you. If, for some reason, it does not remain possible for one to approach people whose rights have been compromised and who cannot be reached for pardon in such cases, may be they have died or have moved away leaving no address, then, one should become very particular about praying for their forgiveness, doing it regularly, always. May be the deeds so offered to seek Allah's mercy for them turn out to be sincere and Allah Almighty, in His infinite grace, may take the responsibility to see that such aggrieved people are satisfied and pleased, and willing to

forgive and forget. (Bahishti Zewar)

The same thing happens to us when others trespass the area of our rights. So, personal nobility and rational need, as well as the Shari'ah of Islam, demand that we too should forgive everyone we are related with in our social circle with an open heart. First of all, this makes you feel good inside, then, this happens to be the sure method of keeping the other person safe against the answerability of the Hereafter. The later is something very dear in the sight of Allah.

The Qur'an and *Hadith* speak of the great merits of accepting the apology of a Muslim brother and forgiving him. In fact, the Holy Prophet صلى الله عليه وسلم has said: 'If a person apologizes to his Muslim brother and he does not accept it, then, he will incur a sin similar to what is incurred by an oppressive taxman.' (Ibn Majah)

It was said in another *hadith*: 'One who does not accept the apology of his Muslim brother made to him, will not be allowed to come to me at the *Hawd al-Kauthar*.' (Targhib wa Tarhib, from al-'Udhr wa an-Nadhr)

The gist of the submission here is that everyone should, well before his death, clean up his conscience in the light of the dictates of his faith in matters that relate to Allah and those that relate to His created beings.

By the way, it is not necessary that people from whom forgiveness is sought for any omissions and commissions in life should be the people with whom

animated relationships through calls, meetings and liason has to be maintained, because doing that is sometimes quite difficult, and not so expedient at others. So, the purpose of forgiving or seeking of forgiveness is not to establish cordial relations based on friendship and informality later on. Instead, the main purpose is to have spiritual relief that comes from having fulfilled the rights of people as envisaged by the Shari'ah.

As for maintaining good relations with one's kinsfolk, the famous dictum of the noble *hadith* is: 'Let them break off relations (if they must), but you (on your part) keep to maintaining relations.' It means that one should be with them when they are hit by sorrows and hardships of life, helping them to the best of one's ability, with money and effort and consolation, and the best of conduct possible. Finally, while doing so, one must keep the pleasure of Allah in sight.

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